IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

BANK OF CHARLES TOWN,

Plaintiff,

v.

CIVIL ACTION NO. 3:10-CV-00102-JPB
(Removed from the Circuit Court of
Jefferson County, No. 10-C-312)

ENCOMPASS INSURANCE,
ENCOMPASS INDEMNITY COMPANY,
MICHELLE GROSSMAN,
JOHN WILSON, AND JOHN OR JANE DOE,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ENCOMPASS INSURANCE

Defendant Encompass Insurance Company (incorrectly named in Plaintiff's *Complaint* as "Encompass Insurance"), by counsel, states as follows in support of its Motion.

BACKGROUND

Plaintiff seeks recovery for alleged water damage to a home in Martinsburg, West Virginia, under a homeowners policy (the Policy) issued by Defendant Encompass Indemnity Company. *Complaint*, Exh. B, Policy Declarations (showing "Insurance Provided By: Encompass Indemnity Company"). Encompass Indemnity Company has appeared in this action and is, as issuer of the Policy, the only entity which could respond to Bank's claims.

Plaintiff named "Encompass Insurance" as a Defendant, but no such entity exists. "Encompass Insurance" is a trade name used by Encompass Indemnity Company on stationery and other materials. Encompass Insurance Company is a separate insurer.

LEGAL STANDARD

A valid complaint must contain "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted)).

DISCUSSION

Encompass Indemnity Company, which issued the Policy, has appeared in this action. Encompass Indemnity Company uses the trade name "Encompass Insurance," but named Defendant "Encompass Insurance" does not exist. Plaintiff alleges no act of the separate Encompass Insurance Company and makes no claim against it. See *Complaint*; *id.* Exh. B, Policy Declarations; *Twombly*, 550 U.S. at 555.

Encompass Insurance Company asks the Court to dismiss named Defendant "Encompass Insurance" and Encompass Insurance Company from this action, with prejudice. Encompass Insurance Company asks the Court to revise the style of this action accordingly.

CONCLUSION

Plaintiff states no claim against Encompass Insurance Company, incorrectly named in Plaintiff's *Complaint* as "Encompass Insurance." Encompass Insurance Company asks the Court to dismiss named Defendant "Encompass Insurance," properly named Encompass Insurance Company, from this action, with prejudice, and to revise the style of this action accordingly

ENCOMPASS INSURANCE COMPANY,

By counsel,

/s/ *Ellen R. Archibald*

Brent K. Kesner (WVSB #2022)
Tanya M. Kesner (WVSB #5162)
Ellen R. Archibald (WVSB #5183)
Kesner, Kesner & Bramble, PLLC
112 Capitol Street
P. O. Box 2587
Charleston, WV 25329
Phone: (304) 345-5200
Fax: (304) 345-5265
Counsel for Defendants

E. Kay Fuller (WVSB #5594)
Martin & Seibert, LC
1453 Winchester Ave.
P. O. Box 1286
Martinsburg, WV 25402-1286
Counsel for Defendants on Plaintiff's Extracontractual Claims

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

BANK OF CHARLES TOWN,

Plaintiff,

v.

CIVIL ACTION NO. 3:10-CV-00102-JPB
(Removed from the Circuit Court of
Jefferson County, No. 10-C-312)

ENCOMPASS INSURANCE,
ENCOMPASS INDEMNITY COMPANY,
MICHELLE GROSSMAN,
JOHN WILSON, AND JOHN OR JANE DOE,

Defendants.

CERTIFICATE OF SERVICE

I, Ellen R. Archibald, counsel for Defendants, certify that the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ENCOMPASS INSURANCE** was served this 7th day of October, 2010, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following as follows:

Stephen G. Skinner, Esq.
Nichols & Skinner, LC
P.O. Box 487
Charles Town, WV 25414
Counsel for Plaintiff

E. Kay Fuller
Martin & Seibert, LC
1453 Winchester Ave.
P. O. Box 1286
Martinsburg, WV 25402-1286
Counsel for Defendants on Plaintiff's Extra Contractual Claims

/s/ Ellen R. Archibald

Brent K. Kesner (WVSB #2022)
Tanya M. Kesner (WVSB #5162)
Ellen R. Archibald (WVSB #5183)
Kesner Kesner & Bramble, PLLC
P.O. Box 2587
Charleston, WV 25329
Phone: (304) 345-5200
Fax: (304) 345-5265

24178/42